

As of 19 January 2018

EXCERPT OF

50 U.S. Code § 3341. *Security clearances*

...

(j) Retaliatory revocation of security clearances and access determinations

(1) In general Agency personnel with authority over personnel security clearance or access determinations shall not take or fail to take, or threaten to take or fail to take, any action with respect to any employee's security clearance or access determination in retaliation for—

(A) any lawful disclosure of information to the Director of National Intelligence (or an employee designated by the Director of National Intelligence for such purpose) or the head of the employing agency (or employee designated by the head of that agency for such purpose) by an employee that the employee reasonably believes evidences—

(i) a violation of any Federal law, rule, or regulation; or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(B) any lawful disclosure to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee reasonably believes evidences—

(i) a violation of any Federal law, rule, or regulation; or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(C) any lawful disclosure that complies with—

(i) subsections (a)(1), (d), and (h) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.);

(ii) subparagraphs (A), (D), and (H) of section 3517(d)(5) of this title; or

(iii) subparagraphs (A), (D), and (I) of section 3033(k)(5) of this title; and

(D) if the actions do not result in the employee or applicant unlawfully disclosing information specifically required by Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, any lawful disclosure in conjunction with—

(i) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

(ii) testimony for or otherwise lawfully assisting any individual in the exercise of any right referred to in clause (i); or

(iii) cooperation with or disclosing information to the Inspector General of an agency, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General.

(2) Rule of construction Consistent with the protection of sources and methods, nothing in paragraph (1) shall be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who lawfully discloses information to Congress.

(3) Disclosures

(A) In general A disclosure shall not be excluded from paragraph (1) because—

(i) the disclosure was made to a person, including a supervisor, who participated in an activity that the employee reasonably believed to be covered by paragraph (1)(A)(ii);

(ii) the disclosure revealed information that had been previously disclosed;

(iii) the disclosure was not made in writing;

(iv) the disclosure was made while the employee was off duty; or

(v) of the amount of time which has passed since the occurrence of the events described in the disclosure.

(B) Reprisals If a disclosure is made during the normal course of duties of an employee, the disclosure shall not be excluded from paragraph (1) if any employee who has authority to take, direct others to take, recommend, or approve any personnel action with respect to the employee making the disclosure, took, failed to take, or threatened to take or fail to take a personnel action with respect to that employee in reprisal for the disclosure.

(4) Agency adjudication

(A) Remedial procedure An employee or former employee who believes that he or she has been subjected to a reprisal prohibited by paragraph (1) may, within 90 days after the issuance of notice of such decision, appeal that decision within the agency of that employee or former employee through proceedings authorized by subsection (b)(7), except that there shall be no appeal of an agency's suspension of a security clearance or access determination for purposes of conducting an investigation, if that suspension lasts not longer than 1 year (or a longer period in accordance with a certification made under subsection (b)(7)).

(B) Corrective action If, in the course of proceedings authorized under subparagraph (A), it is determined that the adverse security clearance or access determination violated paragraph (1), the agency shall take specific corrective action to return the employee or former employee, as nearly as practicable and reasonable, to the position such employee or former employee would have held had the violation not occurred. Such corrective action may include back pay and related benefits, travel expenses, and compensatory damages not to exceed \$300,000.

(C) Contributing factor In determining whether the adverse security clearance or access determination violated paragraph (1), the agency shall find that paragraph (1) was violated if a disclosure described in paragraph (1) was a contributing factor in the adverse security clearance or access determination taken against the individual, unless the agency demonstrates by a preponderance of the evidence that it would have taken the same action in the absence of such disclosure, giving the utmost deference to the agency's assessment of the particular threat to the national security interests of the United States in the instant matter.

(5) Appellate review of security clearance access determinations by Director of National Intelligence

(A) Appeal Within 60 days after receiving notice of an adverse final agency determination under a proceeding under paragraph (4), an employee or former employee may appeal that determination in accordance with the procedures established under subparagraph (B).

(B) Policies and procedures The Director of National Intelligence, in consultation with the Attorney General and the Secretary of Defense, shall develop and implement policies and procedures for adjudicating the appeals authorized by subparagraph (A).

(C) Congressional notification Consistent with the protection of sources and methods, at the time the Director of National Intelligence issues an order regarding an appeal pursuant to the policies and procedures established by this paragraph, the Director of National Intelligence shall notify the congressional intelligence committees.

(6) Judicial review Nothing in this section shall be construed to permit or require judicial review of any—

(A) agency action under this section; or

(B) action of the appellate review procedures established under paragraph (5).

(7) Private cause of action Nothing in this section shall be construed to permit, authorize, or require a private cause of action to challenge the merits of a security clearance determination.

(8) Inclusion of contractor employees In this subsection, the term “employee” includes an employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of an agency. With respect to such employees, the term “employing agency” shall be deemed to be the contracting agency.

(Pub. L. 108–458, title III, § 3001, Dec. 17, 2004, 118 Stat. 3705; Pub. L. 113–126, title VI, § 602(a)(1), (b), (c), July 7, 2014, 128 Stat. 1416, 1417, 1419; Pub. L. 113–293, title III, § 310, Dec. 19, 2014, 128 Stat. 3999; Pub. L. 115–118, title I, § 110(c), Jan. 19, 2018, 132 Stat. 17.)